CHALLENGES IN NORTH CAROLINA PRESERVATION POLICY:
PREVENTING DEMOLITION OF THE STATE’S BUILT HERITAGE

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ABBREVIATIONS

The following common abbreviations are used throughout the dissertation:

COA: Certificate of Appropriateness
HPC: Historic Preservation Commission
NHPA: National Historic Preservation Act of 1966
SHPO: State Historic Preservation Officer (or Office)
SPA: Society for the Preservation of Antiquities
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Challenges in North Carolina Preservation Policy:
Preventing Demolition of the State’s Built Heritage

Introduction:

Although the federal government provides guidance and support, the preservation of historic structures in the United States is principally a function of state and local government. In the State of North Carolina, municipal and county governments have the exclusive jurisdiction to adopt and enforce preservation ordinances, but the enabling legislation limits the authority of these governments in a crucial aspect. As a rule, local authorities cannot prevent the demolition of historic structures. In a recent survey, the State Historic Preservation Office found that North Carolina citizens ranked “demolition of historic resources” as the second greatest threat to “preserving North Carolina's heritage and quality of life.”¹

Focusing on demolition, this dissertation will explore the evolution of preservation laws in North Carolina and at the national level in the United States. A study of the architectural history of the state is included to emphasize why it matters. The laws and regulations in selected sister states as well as Britain will be examined to compare how other jurisdictions regulate the demolition of historic structures, and a discussion of two important court cases will underscore that preservation ordinances do not violate the constitutional rights of private property owners. An analysis of the strengths and weaknesses of the current scheme will be made, and potential improvements in North Carolina’s preservation laws and procedures with regard to demolition will be outlined.

North Carolina has an estimated population of 9,752,000\textsuperscript{2} and is ranked tenth in terms of population among the 50 states in the United States.\textsuperscript{3} It has thousands of buildings that would be considered “historic” under a generally accepted definition of the term.

There are no published studies exclusively on the subject of demolition of historic structures in North Carolina; however, there are references in various publications. For example *Protecting Potential Landmarks Through Demolition Review* by Julia H. Miller\textsuperscript{4}, *Handbook for Historic Preservation Commissions in North Carolina*, published by Preservation North Carolina and the State Historic Preservation Office,\textsuperscript{5} and *A Legal Primer for North Carolina Historic Preservation Commissions* by Chris Guia, Megan Kirkland, and others,\textsuperscript{6} all refer to the legality of demolition.

For the purposes of this dissertation, interviews were held with top preservation officials at the North Carolina State Historic Preservation Office and with a prominent advisor to the legislative study commission responsible for many of the current state statutes on preservation. A survey of local preservation authorities throughout the state was also conducted. While some information garnered from these efforts is included within the body of this report, full results can be found in the Appendices. Hopefully this study will add relevant information to the discourse on the preservation of historic properties in the State of North Carolina.


Section 1: Demolition and Historic Preservation

Historic preservation in North Carolina emerged in the twentieth century as a powerful force to conserve the built heritage of the state. North Carolina has an extant built heritage dating back to 300-year-old buildings constructed by early European settlers. Throughout the twentieth century, there was a growing awareness of the importance of architectural conservation, and that historic structures were being lost in large numbers to demolition.

One of the fundamental principles of preservation is to stop the loss, either from alteration or demolition, of important historical or architectural structures or sites. A key component of preservation is the authority of a government to regulate or stop demolition of these historic assets. There are three basic approaches to “anti” demolition in preservation laws, with variations. First is to vest an agency or official with the authority to deny a request to demolish. Second is the power to delay a demolition for a specified time. Third is to permit an agency or official only to comment on a proposed demolition.

In 1971, the General Assembly of North Carolina first adopted legislation with statewide application for the preservation of limited historic structures. Preservation authorities were given a blend of the lowest and middle levels of anti-demolition power which provided the inherent power to comment coupled with a statutory 90 day waiting period.

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9 Ibid., Section 1.
12 Ibid.
period for demolition. Also, the legislation was limited in its application only to structures that would qualify for National Register listing.

Over the next 20 years the statute was “improved” to facially give more authority to preservation authorities to prevent demolitions. This culminated in a 1989 state legislative act that re-wrote the preservation laws. It is this legislation, with a few subsequent amendments, that is the basic preservation law in North Carolina today. The enabling legislation is fairly elaborate in the procedures an owner must follow to gain consent before altering a historic structure. A section was included on demolition, but it is clear from its title, “Delay in demolition of landmarks and buildings with historic district,” that the authority of local governments to stop demolition was limited. A requirement to obtain a permit to demolish was included in the statute, but the preservation authority could not deny the permit, only delay it. The state was thus moved from the lowest level of anti-demolition authority to the mid-level.

However, for some historic structures, the 1989 legislation included a provision that could give preservation authorities the highest level of anti-demolition power - to deny demolition altogether. For this level of authority to apply, a state official – the State Historic Preservation Officer – had to designate the property as having “statewide significance.” It can be presumed that preservationists believed they had won a great victory in 1989 with a permitting process for the demolition of historic structures, a forced delay in demolition, and at least the possibility of denying the demolition altogether.

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15 Ibid.
18 NC General Statutes, §160A-400.14(c)
To some extent they had. Demolitions of historic structures, which had been a significant problem, slowed considerably. Myrick Howard, the executive director of Preservation North Carolina and influential figure in the state’s preservation system, said in an interview for this dissertation that the current system of preservation regulation generally works well. While certainly a positive assessment, it speaks more to the successes of Howard’s organization in helping the state save a number of significant structures, and not to the strength that local authorities have to prevent demolitions themselves. Regardless of improvements in protecting historic structures following the statewide legislation of the 1970s and 80s, demolitions of historic structures have not stopped.

In 2004 the first “modern” pediatric hospital in the state known as “Babies Hospital” was demolished despite the structure having been landmarked by the City of Wilmington and designated by the State Historic Preservation Officer as having statewide significance.

Recent surveys of historic structures in rural areas document the continuing loss of historic assets. Additionally, private non-profit preservation organizations across the state publish lists of endangered structures. Among others, Preservation North Carolina, the premier non-governmental preservation group in North Carolina maintains an “Endangered Properties Program.” Preservation Chapel Hill, maintains a list of “endangered places.”

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20 J. Myrick Howard, interviewed by author, Raleigh, NC, June 11, 2013. See Appendix C for full interview transcript.
23 See section 8.2 of this dissertation
and Preservation Durham keeps a “Places in Peril” list. It is not difficult to find documentation of the threat to historic properties throughout the state.

At the heart of this exposition are “historic properties.” The preservation statutes of North Carolina do not directly define the term, but the statutes do define a “landmark.” A landmark is a property with “special significance in terms of its historical, prehistorical, architectural, or cultural importance” and possesses “integrity of design, setting, workmanship, materials, feeling and/or association.” This will be the definition of “historic properties” or “historic structures,” or similar terms as those terms are used in this dissertation.

Section 2: Development of Preservation at the National Level

The development of North Carolina’s preservation statutes cannot be fully appreciated without an understanding of the evolution of preservation laws at the national level. Prior to the early twentieth century, there was no federal government activity in architectural conservation and little reported preservation at the state level. Philadelphia’s Independence Hall (or Old State House) was saved from deterioration and restored by the City of Philadelphia in 1828. In the 1850s, the Mount Vernon Ladies’ Association of the Union acquired and began preserving George Washington’s home at Mount Vernon, Virginia. The work of conservation theorists such as William Morris and especially John Ruskin in his Seven Lamps of Architecture which appeared in America in 1859 brought about a steady

27 NC General Statute §160A-400.5.
30 Murtagh, 32, 34.
and greater interest in the preservation of the country’s history. By the end of the nineteenth century, national interest and private patronage were the fundamental means of American preservation efforts, and generally sites associated with the foundation of the country or with the people thereof were deemed “worthy” of preservation.\(^{31}\)

The United States Congress began a generalized approach to historic preservation with the adoption of the Antiquities Act of 1906.\(^{32}\) This act made it a crime to damage historical resources on federal lands, authorized permits for archeological study, and delegated to the President of the United States the authority to designate landmarks.\(^{33}\) While an important first step in national legislation, the scope of the Act was extremely limited because it only applied to federally owned lands.

In 1916 Congress instituted the National Park Service which included some preservation functions – but, as with the Antiquities Act, only on federal lands.\(^{34}\)

The 1930s experienced profuse government-led preservation activity across the nation. In 1931 the City of Charleston, South Carolina, was the first governmental agency in the United States to adopt preservation legislation that applied to privately owned property.\(^{35}\) In 1933 the National Park Service began the Historic American Building Survey.\(^{36}\) This was followed by the American Historic Sites and Buildings Act of 1935 in which preservation of national historic landmarks was declared national policy.\(^{37}\) In 1936, Louisiana adopted the

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31 Murtagh, 30.
35 Brook, 17.
37 Brook, 16.
first state law regarding preservation to apply to the historic French Quarter in New Orleans.38

In 1947, influential preservationists from across the nation formed the National Council for Historic Sites and Buildings – the forerunner of the National Trust.39 In 1949, a seminal event in preservation occurred at the national level when Congress chartered the National Trust for Historic Preservation in the United States.40 The National Trust was to become “the largest single national organization representing the private citizen” in the field of preservation.41

The most significant preservation legislation at the federal level was the National Historic Preservation Act of 1966.42 This Act, often referred to as the “NHPA,” provides a framework for the identification and protection of historic structures through a collaborative effort by federal, state and local governments.43 It is through the NHPA that each state in the United States established a “State Historic Preservation Officer,” or “SHPO,” to coordinate the preservation efforts within the intergovernmental partnerships.44 In this legislation, Congress included in its findings that “historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency” and “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.”45

38 Brook, 17
40 U.S. Congress, 16 United States Code Annotated 468, Section 1.
41 Murtagh, 39, 55.
42 U.S. Congress, 16 United States Code 470 et seq.
44 Hutt, Blanco and Varmer, 22.
45 U.S. Congress. 16 United States Code 470 Section 1, subsection (b) paragraphs (3) and (4).
The NHPA created the National Register which is a national list of historic buildings and sites administered by the US National Park Service.\textsuperscript{46} Not only are individual buildings eligible for listing, the NHPA allows for the listing of areas with concentrations of historic structures as “National Register Districts.”

Notwithstanding its strong public policy for historic preservation, NHPA provides no ultimate protection against the demolition of historic buildings, regardless of whether the building is listed on the National Register or within a National Register District.\textsuperscript{47} This legislation \textit{does not} vest any level of government with the authority to deny an application to demolish any historic structure, regardless of the significance.

NHPA does include a procedure for an agency review, commonly called a “Section 106 review,” for construction proposals that can affect National Register properties, but the NHPA only applies to projects that require or include federal government action through permitting or funding. This review gives no agency the ultimate right to stop the demolition or alteration of historic assets.\textsuperscript{48} Further, the vast number of construction activities in the United States that do affect historic assets do not involve federal funds or permits and thus the NHPA has no direct bearing on most activities that can threaten historic structures. Nonetheless, for projects subject to the review process, Section 106 is a useful tool to bring awareness of the importance of preservation to a developer.

Further, the establishment of State Historic Preservation Officers provides valuable aid to local preservation agencies, and as developed in this dissertation, it is the local agencies that bear the weight of preservation efforts.\textsuperscript{49} While the NHPA does not give any agency at any level of government the authority to prevent demolitions, it nonetheless is a crucial conservation milestone at the national level.

\textsuperscript{46} National Park Service (USA), “National Register of Historic Places,” accessed August 11, 2013.

\textsuperscript{47} Hutt, Blanco and Varmer, 24.

\textsuperscript{48} Ibid., 22, 24.

\textsuperscript{49} Ibid., 25.
Section 3: North Carolina – What is there to preserve?

While North Carolina has been populated for approximately 12,000 years, the existing built environment dates back 300 years to structures constructed by settlers of European, typically of British origin. The settlement by Europeans began in the mid-seventeenth century during the reign of Charles II. From a European perspective the state was politically under the realm of the British monarch. At that time the colony was fairly extensively populated by Native Americans or “Indians” who lived in villages of simple pole and bark constructed “longhouses.” The seventeenth century Europeans who moved to the state built simple, often one room, structures of wood. Neither Indian-built nor seventeenth century European-built structures survive today in the state.

Figure 1: Palmer-Tisdale House, New Bern, circa 1767, Colonial

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52 Ibid., 11.
54 Bishir et al., 12, 19.
56 Bishir et al., 14.
The durability of building materials improved in the early eighteenth century, increasingly with the use of masonry and stone, and structures dating to that time are incorporated into North Carolina’s existing built environment.\textsuperscript{57} The period up to 1776 is generally referred to as the “colonial era” and colonial conservative Georgian architecture was prominent during that period. [Figure 1.] The eighteenth century saw rapid growth of the European-American and enslaved African population and, while the predominant homes were small simple rudimentary farm houses,\textsuperscript{58} very fine structures with clean lines and symmetry of timber frame and wood cladding, or brick or stone, were constructed, dozens of which survive.\textsuperscript{59} The height of architectural achievement during this period was the construction between 1767 and 1770 of a residence, office, and place of assembly in the City of New Bern for William Tryon, the Royal Governor of the colony.\textsuperscript{60} [Figure 2.]

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{tryon_palace.png}
\caption{Tryon Palace, New Bern, original 1770, Colonial, reconstructed 1959}
\end{figure}

\textsuperscript{58} Bishir et al., 52.
\textsuperscript{59} For existing 18\textsuperscript{th} century structures see generally Lane, Chapter 1. For population growth see Bishir et al., 48.
In 1776, North Carolina and twelve other colonies gained independence from British control and formed the United States of America. The last quarter of the seventeenth century to around 1830 is referred to as the “Federal Era.” Buildings of this period were often plain, conservative and, particularly if public, constructed of brick. The differences in Georgian and Federalist buildings were subtle. [Figure 3.]

The period from 1830 to 1861, up to the American Civil War, is known as the Antebellum Era. These years witnessed the dawn of the industrial age and the growth of a merchant class.

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61 See generally Lane, Chapter III.
62 Bishir et al., 56.
63 Sandbeck, 95.
which displayed wealth in its architecture. Wood frame and cladding construction, with Italianate appointments and neo-classical columns became very fashionable. [Figure 4.] Brick became the predominate building material for commercial buildings in cities as a hedge against fire.

Architectural advancement was suspended during the Civil War between 1861 and 1865. At its conclusion, the state entered the Victorian Period and architecture began to include many of the styles of the period including Romanesque, Second Empire, and Queen Anne. [Figures 5 & 6.] Commercial structures continued the use of brick and masonry and cast iron became a common medium for ornamentation.

As the Victorian Period waned in the early twentieth century, architectural styles shifted with the times and for residential structures, Craftsman, California, and Bungalow styles became very popular, concrete

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64 Bishir et al., 138.
65 Ibid.
66 Ibid., 135.
67 Ibid., 192.
68 Ibid., 247.
69 Ibid., 193, 217.
and steel “skyscrapers” began to appear in cities, and “Art Deco” became a common style for commercial structures.\footnote{Sandbeck, 437. and Bishir et al., 295, 298.} [Figure 7.]


Figure 7: 504 Craven St., New Bern, circa 1915-1920, Bungalow

Figure 8: Dorton Arena, Raleigh, 1952, Modernism

North Carolina’s extant built environment covers 300 years and includes fine examples of most major architectural styles of the western industrialized nations. It is difficult to quantify the number of historic properties in the state, but there is sufficient data to calculate a range. The
National (USA) Park Service estimates there are 66,000 “historic resources” in North Carolina that are either individually listed (approximately 2,280 structures) on the National Register or are “contributing structures” within 500 listed National Register Historic Districts. However, there are many structures in the state that are not on the National Register as individual listings or within districts. The State Historic Preservation Office maintains over 100,000 files on historic structures in the state. Regardless of the exact number, it is safe to say that there are tens of thousands of historic properties in North Carolina.

A more detailed explanation of the history of North Carolina’s built environment is included in Appendix B.

Section 4: Development of Preservation in North Carolina

4.1 Evolution of Demolition Statute

While there are various laws in North Carolina promoting the preservation of historic properties, the most fundamental are found in the North Carolina General Statutes in Chapter 160A, Article 19, Part 3C. Within this Part, the current statute addressing the demolition of historic structures is this:


(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. . . . During such period the preservation commission shall negotiate with the owner and

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75 Various personnel from the NC State Historic Preservation Office, interviewed by author, Raleigh, NC, June 10, 2013. Hundreds of the structures on the state survey list have been demolished. See Section 8.2.
with any other parties in an effort to find a means of preserving the building or site.

(b) The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

(c) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. 76

In summary, preservation authorities only have the power to delay an application to demolish certain historic structures for up to a year with one exception – when the State Historic Preservation Officer has determined that the structure has “statewide significance.” Among the jurisdictions examined for this dissertation, this statute is a relatively weak mechanism for preservation.

As at the national level, there was no formal preservation movement in the state in the nineteenth century. It can be presumed that citizens and government officials with an interest in heritage had knowledge of preservation efforts that saved Philadelphia’s Independence Hall and the work to save Mount Vernon. It can also be presumed that heritage-minded citizens of North Carolina were generally aware of the developing conservation theories that were published in the mid-nineteenth century. As the twentieth century dawned, as in other parts of the United States, the people of North Carolina were experiencing a growing understanding that the state had its own unique history and that buildings throughout the state reflected its history.

76 NC General Statute §160A-400.14. Redacted portions of the statute allow the local authorities to accelerate the date of demolition if they find the owner would “suffer extreme hardship” or the property has no historical significance. The statute also provides time to process a landmark designation that is pending at the time of a demolition application.
In the first few years of the new century, the General Assembly of North Carolina (the state legislature) established the North Carolina Historical Commission in 1903 – the nation’s then third oldest historical commission.\textsuperscript{77} By 1907 the legislature tasked the Historical Commission to mark and preserve “battlefields, houses and other places celebrated in the history of the state.”\textsuperscript{78} However, the commission was not funded for the preservation of historic structures and, instead, devoted its efforts to archival and museum endeavors.\textsuperscript{79}

While the concept of preservation was developing as a worthy state principle, in the early twentieth century the actual work was accomplished largely by women’s clubs, such as the National Society of Colonial Dames of America, who occasionally purchased houses with state historical or architectural significance.\textsuperscript{80}

In 1939, the Garden Club of North Carolina published “Old Homes and Gardens of North Carolina” where it was noted that scores of architecturally significant homes had been lost or were “beyond hope of revival or reconstruction.”\textsuperscript{81} At this time a private, but formal, movement for the preservation of the state’s historical structures was initiated with the establishment of the North Carolina Society for the Preservation of Antiquities.\textsuperscript{82} While a private, non-profit corporation, the “SPA,” as it was sometimes called, had strong ties to state government.\textsuperscript{83} At its inaugural membership meeting in 1939 topics presented for discussion included the restoration of Bath (the state’s oldest town) and the reconstruction of Tryon Palace in New Bern.\textsuperscript{84} Unfortunately even though the state now had an organization dedicated to historic preservation, prior to World War II, there was a heavy loss of historic structures.\textsuperscript{85}

\textsuperscript{77} Brook, 14.
\textsuperscript{78} Ibid.
\textsuperscript{79} Ibid., 16.
\textsuperscript{80} Ibid., 6.
\textsuperscript{81} Ibid., 7.
\textsuperscript{82} Ibid., 17, 26.
\textsuperscript{83} Ibid., 26.
\textsuperscript{84} Ibid., 31.
\textsuperscript{85} Ibid., 6.
With increasing rigor and focus, efforts of the SPA marched on. In 1947, Jessie Parker, an SPA member, advocated for legislation on a statewide level to prevent the demolition of structures more than 100 years old.86 That year the SPA resolved to ask the state to make a survey of old buildings, and “that the state legislature be asked to place some restrictions on indiscriminate destruction of these landmarks of history.”87 Inglis Fletcher, the vice president of SPA, advocated for a state board of restoration architects to approve plans for any buildings that were more than 100 years old.88 She advocated a statewide regulatory scheme based on European models and is quoted as saying it was “no use in trying to treat these depredations locally.”89

In North Carolina, the door to preservation through local legislation was opened in 1948 when the City of Winston-Salem enacted the state’s first historic preservation ordinance in reaction to the proposed construction of a modern grocery store in Old Salem.90

In 1949, the SPA acquired copies of English preservation statutes with the assistance of Sir Raymond Streat, and an effort was made to encourage the state Senate to appoint a study committee on historic preservation.91 For the next twenty years, the SPA continuously advocated for the state legislature to adopt “historical zoning legislation for the entire State of North Carolina.”92 In a 1961 speech to SPA members, Elizabeth Stevenson Ives is quoted as saying,

“I really believe that the fundamental requirement will be in getting legislation passed. We as individuals in a community can save one little house or perhaps two houses, but unless there is going to be an overall plan and the law is on our side, we can go only so far. The rest of us on our humble projects will have to count on better legislation. … A commission must pass on old buildings before

86 Brook, 72.
87 Ibid.
88 Ibid.
89 Ibid.
90 Ibid., 17.
91 Ibid., 73. It would be another 20 years before a legislative committee was appointed to study preservation legislation.
92 Ibid., 109
they are touched in Italy, France, and Quebec. This is the thing we have to see is done in this great country.”

A bill in 1965 to authorize municipalities to form historic preservation commissions with the power to delay demolition requests for 60 days, did not advance. That same year however, though not statewide, there was an important legislative milestone. Reacting to a legal challenge to Winston-Salem’s zoning ordinance to protect Old Salem, as well as an adverse opinion as to the validity of such ordinance from the state’s Attorney General, the state Department of Archives and History and the Institute of Government of the University of North Carolina at Chapel Hill recommended that the General Assembly adopt a local bill to specifically approve the historic zoning ordinances for Winston-Salem. The towns of Edenton, Halifax, and Bath were all added to the protection of the bill which was adopted by the state legislature later that year. By 1970 another five municipalities were added to the protection of the legislation.

In 1969, the General Assembly authorized the Department of Archives and History to establish a registry of historically or architecturally significant structures “in order to provide protection to the people of the State from the danger of loss or damage to significant privately owned buildings consistent with the rights of the owners thereof.”

In 1971, the General Assembly of the State of North Carolina adopted the first statewide statutes for the preservation of historic structures. The legislative findings include “The historical heritage of our State is one of our most valued and important assets.

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93 Ibid., 108
94 Brook, 109
96 Brook, 109.
97 Ibid.
98 Ibid.
Conservation of historic properties will stabilize and increase the values in their areas and strengthen the overall economy of the State.”\textsuperscript{101}

The state’s approach for legal protection of structures was through local governments (cities and counties) by the establishment of local “historic properties commissions” - as opposed to a state agency - though the Department of Archives and History was empowered to act as a consultant to the local governments.\textsuperscript{102} Criteria for designation of a “historic property” under the National Historic Preservation Act of 1966 was included in the state legislation meaning that only properties that would qualify for National Register listing were covered by the statute.\textsuperscript{103}

Notwithstanding a statute with statewide implications, the protection of historic assets from potential demolition was “deliberately mild.”\textsuperscript{104} For demolition or other material alterations to a historic structure, an owner was not required to have permission of the historic properties commission, but only to give notice of intent to demolish and then wait for 90 days during which time the commission was to negotiate with the owner “in an effort to find a means of preserving the property.”\textsuperscript{105} Protection of historic assets was completely voluntary on the part of the local governments. If they chose not to participate, there was no legal framework for protection in the planning jurisdiction of the locality.

In 1973, by amendment to its new preservation laws, the General Assembly specifically provided for “historic district commissions” in addition to “historic properties commissions.”\textsuperscript{106} The 1973 legislation did not directly refer to demolition or major alterations to historic structures.

\textsuperscript{102} Ibid., 1406.
\textsuperscript{103} Ibid., 1405.
In 1979 the General Assembly revisited and strengthened the preservation laws. The legislation required applications for a “certificate of appropriateness,” commonly referred to as a “COA,” to the historic commissions before landmarks or buildings within a historic district could be demolished as opposed to the previous “notice of intent” to demolish. Still, however, COAs for demolition could not be denied, but commissions could impose a delay on demolition for up to 180 days during which time negotiations for preservation were to be undertaken.

After the profound preservation legislation in the decade of the ‘70s, the state legislature took a short breather as preservation activities were assumed by local governments under their new authority. In 1987, with findings that included “the need for greater efforts to protect historic properties is now particularly acute as North Carolina continues to lose hundreds of architecturally and historically significant buildings and areas which are priceless and irreplaceable assets of the State,” the General Assembly appointed a committee to study the preservation laws. The committee reported in 1989. It noted that the law required properties to qualify for listing on the National Register for protection, but there were other properties “that are nonetheless of vital aesthetic, historic, and economic value to localities, regions, of the State.” Other findings included that local enabling legislation needed to be “easier to work with, more efficient, and more meaningfully enforceable”; but, the committee went on to note that “this increased enforceability should not be effected to the detriment of the private property-owner.” (This tension between the common good and private property rights is at the heart of the demolition question.)

108 Ibid., 245.
110 Ibid., 10.
111 Ibid., 10.
The committee made various recommendations to enhance preservation. One was that no alteration, including demolition, of structures in a historic district, or landmarks outside a district,\textsuperscript{112} could be effected without receipt of a certificate of appropriateness from a historic preservation commission.\textsuperscript{113} The committee recommended that preservation measures should extend to significant properties that might not qualify for the National Register.\textsuperscript{114} The committee did not recommend authority to prohibit demolition, but did recommend the delay period be increased from six months to a full year “in order to permit an adequate amount of time for local preservationists to work with the property owners to resolve their conflicting interests and to preserve more properties.”\textsuperscript{115} The committee essentially proposed a virtual re-write of the preservation statutes in North Carolina to address all of its recommendations.

Despite the many recommended changes that clearly would enhance preservation, the proposed legislation remained based on voluntary city and county legislation, leaving many historic assets with no protection in those areas of the state where local authorities were unwilling to establish historic preservation commissions.

The provisions in the proposed bill promulgated by the 1989 legislative study committee relating to demolition, had three major components. The first was:

“§ 160A-400.9. Certificate of appropriateness required.

(a) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure . . . shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission.”\textsuperscript{116}

\textsuperscript{112} Landmarks still had to be in the geographic jurisdiction of the historic preservation commission, if not in a district, to have statutory “protection.”

\textsuperscript{113} This is in the bill proposed by the committee from North Carolina General Assembly, Legislative Research Commission on Historic Preservation, \textit{Report to the 1989 General Assembly of North Carolina} (Raleigh, 1989), pg. F-9.

\textsuperscript{114} \textit{Report to the 1989 General Assembly of North Carolina}, 10.

\textsuperscript{115} Ibid., 11-12.

\textsuperscript{116} Ibid., F-9.
The second gave some muscle to enforcement by including a section on “remedies” which enabled local authorities to “institute any appropriate action . . . to prevent such unlawful demolition” and “to prevent any illegal act or conduct with respect to such building.”

The third was § 160A-400.14 - “Delay in demolition of landmarks and buildings within historic district.” This contained the maximum one year delay on demolition applications and the committee’s recommendation was the same as the statute currently in force as set out on pages 15 - 16 with two fairly significant differences to be discussed below. As proposed, this section had some real teeth. In subsection (c) a property could be completed protected from demolition if the State Historic Preservation Officer designated it as having “statewide significance.” There was no qualifier on the definition of “statewide significance.”

The General Assembly accepted most of the committee’s proposal and adopted the legislation on August 1, 1989 in a bill called “An Act to Regulate Historic Districts and Landmarks.” As for demolition, there were two major changes from the legislation proposed by the committee in 400.14. The General Assembly did not accept a delay period of 365 days and substituted the 180 day waiting period that was in the 1979 legislation. And for the real power of the statute, in subsection (c), to completely protect a property from demolition by a “statewide significance” determination from the SHPO, the legislature added the qualifier that such designation had to meet the criteria for listing on the National Register at a state level of significance.

The issue over delaying demolition was not settled. In 1991, the General Assembly revisited the issue and adopted a bill titled “An Act to Increase the Length of Time for Which the Effective Date of a Certificate of Appropriateness May be Delayed.” The key provision of this 1991 legislation was to increase the time historic preservation commissions could delay demolition certificates from 180 days to the current 365 days.

Since 1991, no statewide legislation pertaining to demolition has been adopted. The rule remains that local preservation commissions can delay demolitions for up to a year, but cannot deny them. Only if the SHPO gives statewide significance can the property be virtually insulated from demolition.

However, there are three jurisdictions with special exceptions. The General Assembly granted special authority through “local bills” to the Cities of Statesville (in 2005), Salisbury (2007) and New Bern (2007) to deny demolition applications for structures within historic districts or for landmarks. There is no linkage to a “statewide significance” determination by the SHPO. Those local authorities can decide whether or not to permit a demolition of a historic structure. In North Carolina there are therefore three jurisdictions that possess the power to virtually stop the destruction of historic properties without a finding of statewide significance by the SHPO.

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121 The legislation also brings the “relocation” of a historic structure under the purview of the demolition statute.
4.2 **Designation of “Statewide Significance”**

With the adoption of §160A-400.14(c) in 1989, the State Historic Preservation Officer was tasked to determine whether a structure has “statewide significance” as defined in the criteria of the National Register of Historic Places.” The National Park Service as the administrator of the National Register recognizes three different levels of historic significance: local, state, and national. \(^{123}\) (The SHPO’s regulation provides that a listing at the national level includes state significance. \(^{124}\) ) The National Register guidelines list eight criteria for determining “statewide significance” including:

2. A property with state significance helps us understand the history of the state as a whole by illuminating the state wide impact of events or persons associated with the property, or its architectural type or style, or information potential. State significance may also apply to a property that illustrates a theme that is important to the history of the state.

6. A property with information potential or that is associated with events, persons, or architectural types or styles whose impact appears to have extended beyond the local level may be significant at the state level." \(^{125}\)

In determining whether a property has “statewide significance” for the §160A-400.14(c) protection against demolition, SHPO follows a process requiring a formal application and a decision-making-process on each structure regardless of whether it is listed on the National Register at either the state or national level. \(^{126}\)

4.3 **Local Historic Preservation Commissions (HPCs)**

The enabling statute requires local preservation commissions to adopt “principles and guidelines . . . for new construction, alterations, additions, moving and demolition.” \(^{127}\)

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\(^{125}\) Ibid.

\(^{126}\) Ibid.; Interview with SHPO personnel.

\(^{127}\) NC General Statute §160A-400.9 (c).
The document addresses such matters as repairs and additions to existing structures, as well as new construction in the Beaufort Historic District. These guidelines also directly address demolition in Chapter 10, and while demolition “is strongly discouraged,” the chapter recognizes the limitation on the commission to deny demolition, but does contain the right of delay for 365 days and the possibility of a statewide significance designation by the SHPO to thwart a structure’s destruction.129

Reflecting the prescriptive requirements of the enabling statute, the City of Wilmington has a similar provision in its “Design Guidelines for Historic Districts and Landmarks” in a chapter titled “Relocation and Demolition.”130 The text notes that an application to demolish a building “cannot be denied” unless the SHPO has determined that the property has statewide significance, but the guideline allows the commission to delay the demolition for 365 days.131

Those are typical guidelines of local preservation commissions in North Carolina. However, based on its 2007 local bill, the City of New Bern takes a dramatically different approach. In the “City of New Bern Historic District Guidelines & Handbook,” in a chapter titled “Guidelines for Relocation and Demolition,” is stated “An application for a COA for the demolition of a contributing structure may be denied by the HPC. . .”132 There are

129 Ibid., 27.
131 Ibid., 88.
standards for review of an application, but the commission has the ultimate authority to prevent a demolition. This is extraordinarily rare in North Carolina.

4.4 Organized Private Efforts

Private preservation efforts must be mentioned as part of the endeavor to prevent the demolition of historic structures in North Carolina. Although government regulation has evolved as the preeminent force for historic preservation, private preservation organizations, as tradition would have it, still play a crucial role in the field, especially when structures are under threat of demolition.

The premier statewide private preservation group evolved from the influential SPA to become the Historic Preservation Foundation of North Carolina, known commonly today as Preservation North Carolina. 133 134 In addition, there are approximately 28 local nongovernmental organizations across the state dedicated to historic preservation, as well as several heritage groups with a strong preservation component.135

Most local groups “owe their existence to the threats to or the loss of” architecturally or historically significant buildings.136 These organizations usually serve a wide range of functions which can include property identification, recording and upkeep of local architecture surveys, preparation of National Register nominations, preservation education and technical assistance for the community, other general advocacy and promotion of public awareness for local historic preservation issues.137 Many of these organizations operate revolving funds to acquire threatened properties from deterioration or demolition, reselling

134 Brook, 135, 138.
135 Combine list from SHPO website and Preservation North Carolina.
137 Stipe and Lee, 211, 217-221.
them to preservation-sensitive buyers and administering programs for preservation easements.138

Preservation easements (also covenants or restrictions) are private, “nonstatutory and nongovernmental,” agreements between a property owner and a preservation organization to ensure certain protections for a structure or piece of land. Easements are donated to, or purchased by an organization that will administer the specified terms, and thereupon require the owner of the “burdened” property to gain authorization by the easement-holding-organization for any number of alterations or demolitions to a structure.139

Easements have several positive effects to protect against demolition in North Carolina. Foremost, if an owner is willing, preservation easements can be placed on any historic structure either outside of or within the purview of a preservation commission and can grant the power to completely prohibit the demolition of the burdened property. Where a property is outside the jurisdiction of a preservation commission, easements serve in much the same way as local landmark or historic district regulation in terms of design guidelines, etc. As a rule, regardless of where the property is located, an easement with a “no demolition” provision can protect a structure far beyond the guidelines of local preservation commissions.140 The National Trust encourages the use of robust non-demolition easements to mitigate against “weak” local government regulations that lack the power to stop demolitions.141

North Carolina’s private preservation groups have had success with revolving funds and easements programs. Preservation North Carolina holds around 715 easements for individual properties, all with restrictions prohibiting demolition. Of that number, 125 were

138 Stipe and Lee, 210-211.
139 Ibid., 212-213.
141 Ibid.
voluntarily donated easements, while the others were property sales with easements by the organization to preservation buyers.\textsuperscript{142}

Locally, the Historic Wilmington Foundation ("HWF") has saved 150 properties from demolition and currently holds 85 easements with non-demolition provisions. According to the group’s executive director, "HWF holds more easements than any other local preservation organization in the state and we work on our program constantly."\textsuperscript{143} A similar private organization in the City of Durham, Preservation Durham, has placed 55 protective covenants with anti-demolition clauses on historically significant structures throughout the city and has successfully advocated for the preservation of "countless others."\textsuperscript{144}

But one way or another, private easements are based entirely on the voluntary agreement of a property owner, or the willingness of a purchaser to accept the easement. Echoing the sentiment of early SPA members, strong government regulation is needed to protect the volume of historic properties in the state.\textsuperscript{145}

Section 5: How Other Jurisdictions Regulate Demolition.

In exploring the statutory framework for preservation in North Carolina, a comparison with other jurisdictions is useful. There are 50 states in the United States and a study of all 50 is beyond the scope of this dissertation. As North Carolina was an original British colony, an examination of the approach by two other former British colonies will be undertaken. Florida, originally a Spanish colony, and with the oldest town in the nation, will also serve for comparison. Finally, the preservation approaches in Scotland and England will

\textsuperscript{142} Email exchange with Preservation North Carolina executive director, Myrick Howard, on July 29, 2013.
\textsuperscript{143} Email exchange with Historic Wilmington Foundation executive director, George Edwards, on July 29, 2013.
\textsuperscript{144} Email exchange with Preservation Durham preservation coordinator, Elizabeth Marsh, on July 29, 2013.
\textsuperscript{145} Brook, 108.
be examined to compare and contrast the North Carolina approach with those of its British founders.

5.1 New York State and New York City Approach to Demolition

New York was chosen as a comparison state because of its rich history and size as one of the most populous states in the nation. In New York, as in the other American jurisdictions studied, local governments are ultimately responsible for preservation. But the enabling statute is very broad compared to that of North Carolina and local governments are not under the constraints that are contained in the North Carolina enabling statutes. The New York statute itself provides “the opportunity and flexibility for the counties, cities, towns and villages of the state to manage the historic and cultural properties under their jurisdiction.” The statute contains the following delegation of power to local authorities:

1. Provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art and other objects having a special character or special historical, cultural or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within the public view, or both.

2. Establish a landmark or historical preservation board or commission with such powers as are necessary to carry out all or any of the authority possessed by the municipality for a historic preservation program, as the local legislative body deems appropriate.”

The New York state statute does not specifically refer to the power of local authorities to regulate demolition of historic properties; however, as indicated in the \textit{Penn Central vs. New York City} case described in section 6.1 of this dissertation, such power exists.

The New York City ordinances and regulations on historic preservation use an eleven member “Landmarks Preservation Commission” for the preservation of landmarks and

\begin{footnotes}
\item[147] Ibid., §119-aa.
\item[148] Ibid., § 119-dd.
\end{footnotes}
As for demolition of historic structures the city’s administrative code provides:

“§ 25–305 Regulation of construction, reconstruction, alterations and demolition.

a. (1) . . . [I]t shall be unlawful for any person in charge of a landmark site . . . to alter, reconstruct or demolish any improvement constituting a part of such site . . . unless the commission has previously issued a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed authorizing such work, and it shall be unlawful for any other person to perform such work or cause same to be performed, unless such certificate or notice has been previously issued.”\(^{151}\) (Emphasis added.)

The city’s regulations then provide the standards for the landmarks preservation commission to use when considering an application for a “no effect” determination which is prerequisite to demolition. They include:

“(a) whether the proposed work would change, destroy or affect any exterior architectural feature of the improvement on a landmark site or in an historic district or any interior architectural feature of the interior landmark upon which said work is to be done . . . .”\(^{152}\)

The commission’s power to prevent demolition is not absolute. For a property owner pushing for demolition, after finding by the commission of an adverse impact on preservation, the commission can be forced to make a determination as to whether or not the subject property “is not capable of earning a reasonable return.”\(^{153}\) The formulas for “reasonable return” are complicated,\(^{154}\) but if the property owner is able to prove the elements, he will ultimately be successful with the demolition. However, as evidenced by the


\(^{152}\) Ibid.

\(^{153}\) Ibid., § 25–309.

Penn Central vs. City of New York case, an owner does not have an easy road to demolition and for those structures that have been either landmarked or are located within a historic district, the city’s regulatory scheme of historic protection is effective.

5.2 Virginia Laws on Demolition of Historic Structures

The Commonwealth of Virginia was chosen as a jurisdiction to study because it was the first successful British Colony in America and is home to a wealth of historic structures including Bacon’s Castle and several others dating to the seventeenth century, original structures in Colonial Williamsburg, and Thomas Jefferson’s Monticello and University of Virginia.

There are approximately 2,000 structures in the state listed on the National Register. With an obvious connection to architectural history, it could be presumed that the legal protection given to historic structures in Virginia would be strong.

The enabling statutes for historic preservation in the Commonwealth are set out in the Code of Virginia in a chapter titled “Preservation of historical sites and architectural areas.” This statute enables local governments through land use ordinances to preserve “historical or archaeological resources” and to establish historic districts and review boards to administer local ordinances. With respect to demolition the statute provides:

“2. Subject to the provisions of subdivision (3) of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.”


158 Ibid.

159 Ibid., subsection 2.
The law then turns into something of a delay-in-demolition statute by giving the owner “as a matter of right” the right “to raze or demolish such landmark, building or structure” if the owner has attempted to sell the property for a scheduled amount of time for fair market value to a person or entity.\textsuperscript{160} The time schedule for sale is on a sliding scale based on the offering price for the property and starts at three months for $25,000 offers and slides up to twelve months for an offering price of $90,000 or more.\textsuperscript{161,162}

Virginia has a system of listing historic properties on a state registry. However such listing is “honorary” and does not provide legal protection against alteration or demolition.\textsuperscript{163}

As to how the anti-demolition component of preservation works at the local government level, the City of Lexington is a typical example. Lexington is in the Shenandoah Valley and was settled by Scots-Irish and German immigrants in the 1730s.\textsuperscript{164} The population is approximately 7,000.\textsuperscript{165} It has “has a rich history and an abundance of significant architecture represented in its buildings.”\textsuperscript{166}

The Lexington preservation ordinances are contained in the general zoning chapter of the town code.\textsuperscript{167} An “architectural board” is the agency responsible for preservation decisions and has authority within the town’s historic districts and over “historical buildings and areas” it designates outside of the districts.\textsuperscript{168} Work within a district or on a designated

\textsuperscript{160} Code of Virginia, subsection 3.
\textsuperscript{161} Ibid.
\textsuperscript{162} The delay-in-demolition schedule keyed to price seems designed to facilitate non-governmental preservation organizations arranging the purchase of historic properties.
\textsuperscript{166} City of Lexington, “Lexington Past and Present.”
\textsuperscript{168} City of Lexington Code, §420-153.
building, including demolition, can only take place pursuant to a certificate of appropriateness issued by the board.\footnote{City of Lexington Code, §420-156.}

The town code speaks directly to “razing or demolition” and essentially incorporates the provision of the Virginia statutes for the procedure which essentially is the delay-in-demolition process where an owner is required to offer his property for sale and to wait for the prescribed statutory time period; the sliding scale is based on the offering price but for a maximum of 12 months before moving to demolish if a sale is not arranged.\footnote{City of Lexington Code, §420-157.A (subsection 2)}

The City of Lexington has implemented as strong of a preservation plan as permitted under Virginia law, but it is constrained by what essentially is the delay-in-demolition enabling statute.

5.3 Preservation in Florida: Regulation of Demolition

Florida was chosen as a comparison state because it has many structures of historical and architectural significance and the first permanent settlement by Europeans in what is now the United States, is located here.\footnote{Florida Division of Historical Resources, “A Brief History of Florida,” accessed July 17, 2013, http://www.flheritage.com/facts/history/summary/index.cfm.} The state statute for historic preservation is the Florida Historical Resources Act.\footnote{George B. Abney, “Florida’s Local Historic Preservation Ordinances: Maintaining Flexibility While Avoiding Vagueness Claims”, Florida State University Law Review 25, no. 3 (Spring 1998): 1021.} This is a broad, non-specific, statute to enable local governments to exercise their police powers to preserve historical assets.\footnote{Ibid., 1022-1023.}

In regards to historic properties, the Act states, “The destruction of these nonrenewable historical resources will engender a significant loss to the state’s quality of life, economy, and cultural environment.”\footnote{West’s Florida Statutes Annotated, Volume 12, Pt. 2. Supplemented 2013 (New York: Thompson Reuters, 2009), 176.} This section goes on to include that it is a state
policy to “assist local governments to expand and accelerate their historic preservation programs and activities.”  

The Division of Historical Resources is created and given overall authority to coordinate preservation efforts at the state level and to take action to preserve the state’s historic resources. However, the Division does not act to prevent the demolition of historic structures in the state. The Division is empowered to “[a]dvise and assist, as appropriate, federal and state agencies and local governments in carrying out their historic preservation responsibilities and programs.” The Division recognizes that local governments have the “greatest power” to preserve historical assets.

There are no specific limits in the Act on the authority of local governments to restrict or prevent the demolition of historic structures. As a result, at least some of the local governments in Florida have taken action that severely restricts the demolition of these structures.

**St. Augustine**

A review of demolition ordinances would be incomplete without examining the approach used by the City of St. Augustine, the “oldest permanent European settlement” in the United States. St. Augustine has several historic structures dating to the late sixteenth and early seventeenth centuries.

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175 *West’s Florida Statutes Annotated*, 176.
176 Ibid., 173.
178 *West’s Florida Statutes Annotated*, 173.
180 St. Augustine Code, Ch. 6, Sec. 6-2, accessed July 17, 2013, http://library.municode.com/index.aspx?clientID=10951&stateID=9&statename=Florida
A five member historic architectural review board is charged with determining preservation compliance for any changes to historic properties including demolition of structures. Certificates of appropriateness for demolition are required for all structures that “are fifty (50) years old or older, which are listed on the Florida Master Site File maintained by the State of Florida Division of Historic Resources, or which have been designated as an historical landmark.” Additionally protection is given to “primary structures” with the potential for landmark status within historic preservation zoning districts and National Register districts.

The ordinances give the board the authority to deny a demolition application for a building that is “of exceptional significance, is a contributing property to a National Register of Historic Places District or has been individually listed on the National Register of Historic Places... (and) the board finds the removal of such building or structure will be detrimental to the historic and architectural character of the city.” The owner may then appeal the decision on the basis of “economic hardship” with criteria for declaration as outlined in the ordinance. The burden of proof to support a request for demolition is on the applicant.

There is another layer of anti-demolition protection in St. Augustine. The ordinances require approval from the city commission for “the destruction of colonial buildings listed on the Florida Master Site File, designated Local Landmarks, or buildings meeting the criteria for eligibility on the National Register of Historic Places.”

Palm Beach, FL

The landmarks preservation commission of the Town of Palm Beach is a seven member body that issues certificates of appropriateness for any exterior alterations (including

182 St. Augustine Code, Ch. 28, Article II, Division 3, “Historic Architectural Review Board,” Sec. 28-87.
183 Ibid.
184 Ibid.
185 Ibid.
186 Ibid., subsection 3.b.
187 Ibid.
188 Ibid., subsection 2.d.
demolitions) to locally landmarked structures and structures within historic districts. The preservation ordinance in the Palm Beach Code of Ordinances has a comprehensive section on demolition which requires the commission to give consideration to such factors as historic or architectural significance of the building, remaining examples of the building, and condition. When faced with an application for demolition, the code gives the commission direct authority to deny such certificates for a one year period. The year following the refusal of the demolition COA, the commission is directed to “cooperate with the owner of a landmark or a property located in a historic district...to seek alternative economic uses for such landmark or property.” The denial of the application is then to be reviewed annually thereafter.

The Palm Beach ordinance effectively gives the landmarks commission the power to deny a certificate of appropriateness for a demolition indefinitely. A property owner has the right to appeal a denial on the basis of “extreme economic hardship” where the owner “must prove he cannot realize any reasonable and beneficial use of or return from the property” by meeting a certain set of criteria. Though it would likely be difficult to meet such stringent criteria, if the property owner does succeed in proving economic hardship, then before the issuance of a demolition permit, plans for a replacement structure must be approved by the appropriate town authority. The demolition permit and new (replacement) construction permit are issued concurrently.

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190 Town of Palm Beach Code, Ch. 54, Article III, Sec. 54-125 (a), accessed July 17, 2013, http://library.municode.com/index.aspx?clientId=11397
191 Town of Palm Beach Code, Ch. 54, Article IV, Sec. 54-163, subsection 6-8, accessed July 17, 2013, http://library.municode.com/index.aspx?clientId=11397,
192 Palm Beach Code, Ch. 54, Article IV, Division 3, Sec. 54-125, subsection (c)
193 Ibid., subsection (d)
5.4 Scottish and English Approach to Demolition

While historic preservation is an important public policy throughout the United States, the peoples of Great Britain place an even higher value on preservation than most jurisdictions in America. This is evident in the British approach to severely restricting the demolition of historic structures. While not all historic structures in Britain are beyond the reach of the demolition ball, without question the policies and procedures in the United Kingdom afford significantly more anti-demolition protections than most in the United States and certainly more than in North Carolina.

Formal legal protection in the United Kingdom for historic *monuments* began in 1882. Legal protection for *structures* dates to 1913 and the enactment by Parliament of the Ancient Monuments Consolidation and Amendment Act 1913. Heritage conservation thereafter evolved with various acts of Parliament. For Scotland the most current core statute for most historic structures is the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as interpreted and implemented in the Scottish Historic Environment Policy of 2011. At the national level, a government agency known as *Historic Scotland* oversees the preservation of the built environment. For England, the statute covering most historic structures is the Planning (Listed Buildings and Conservation Areas) Act 1990 as interpreted and implemented in National Planning Policy Framework and “PPS5: Planning..."
for the Historic Environment – Practice Guide.”

The government agency at the national level in England is the Historic Buildings and Monuments Commission for England commonly known as English Heritage. With respect to “ancient monuments” in both Scotland and England, the the Ancient Monuments and Archaeological Areas Act 1979 applies.

The systems of preservation in these countries have a common foundation laid by the Parliament of the United Kingdom and suffice it to say that there are no material conceptual differences in the systems. As a result, only the Scottish system will be discussed in detail.

The basic approach to preservation in Scotland begins with the identification and “scheduling” or “listing” of structures with historical or architectural significance. “Scheduling” is for monuments that have national significance. There were approximately 8,000 scheduled monuments in Scotland in 2010. Historic Scotland assumes direct jurisdiction over scheduled monuments. Edinburgh Castle is an example of a Scheduled Monument.

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203 An “ancient monument” is generally “a monument which . . . is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.” See Ancient Monuments and Archaeological Areas Act 1979, Section 61 (12), http://www.legislation.gov.uk/ukpga/1979/46.
207 Scottish Historical Environmental Policy, 63.
208 Ibid., 64.
“Listing” is the process by which the Scottish Government recognizes buildings and other man-made structures of “special historical or architectural significance” and gives them protection from demolition and alteration. No work on a listed building can take place until “listed building consent” is received from the planning authority with jurisdiction. Listed building consent is similar in theory to a “certificate of appropriateness” under the North Carolina (and most other states’) system, except the Scottish process goes considerably further in protecting historic structures. Of great significance in Scotland is the stated legal presumption against the demolition of any listed building.

There are three categories of listed structures in Scotland:

- “A” buildings, which are those of national or international importance or exemplary of a architectural style;
- “B” buildings, which are generally of regional importance; and
- “C” buildings, which are generally of local importance.

There is no difference in the treatment of the three categories in terms of principles relating to demolition or alteration; but, for government grant purposes, “A” and “B” listed buildings are given priority. Local planning authorities (departments of Scottish “councils”) have initial authority over listed building consent.

The records of listed buildings are kept by the Royal Commission on the Ancient and Historic Monuments of Scotland, a public body sponsored by Historic Scotland. There were approximately 47,000 listed buildings in Scotland in 2010.
Listing is for individual structures or a group of structures on a single site. Scotland also has a system for protection of historic areas, called “conservation areas,” which are similar to “historic districts” in the United States.” Conservation areas are generally designated by local planning authorities. No building in a conservation area may be demolished without building consent. The Scottish Historical Environmental Policy notes that “The demolition of even a single building and the construction of a new building or buildings in its place could result in harm to the character or appearance of a conservation area, or part of it.” The effect of this language is to establish a presumption against demolition of an unlisted building in a conservation area similar to the presumption for a listed building.

The anti-demolition statutes and policies are not absolute. A property owner has the right to apply for listed building consent to demolish a protected structure. Under very limited circumstances, local or national planning authorities have the jurisdiction to grant consent for demolition. But in order to demolish a listed building, an owner has the burden of proving that “all efforts to retain a building have been exhausted” and the owner has to show “clear evidence” of why preservation efforts have failed. If the local planning authority intends to grant consent to demolish, regardless of the category of listing, the proposed demolition must be reviewed by Historic Scotland which has the authority to refer the matter to the Scottish Ministers for a final decision.

For listing of buildings in England, there are also three classifications, though the nomenclature is a little different.

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218 Ibid.
219 Ibid., Section 66.
220 Scottish Historical Environmental Policy, 43.
222 Ibid., 4.
223 Ibid.
224 Ibid., 4-5.
• Grade I is for buildings of “exceptional interest.”
• Grade II* is for “particularly important buildings of more than special interest.”
• Grade II is for buildings “of special interest, justifying every effort to preserve them.”

Approximately 374,000 buildings in England are listed. 92% of those are Grade II listed.

In 2010 there were approximately 20,000 scheduled monuments in England. Stonehenge is an example of a Scheduled Monument in England.

With the exception of scheduled monuments, in both the Scottish and English systems, local planning authorities are at the forefront of enforcing preservation. The British statutes and administrative regulations delegate to local planning authorities at the district council level (sometimes the county level in England) the initial jurisdiction to consider applications for consent to demolish protected buildings.

5.5 General Comparison

The authority to deny a demolition permit vests a preservation commission with the strongest means to enforce the conservation of historic structures. Commissions with the authority to delay demolitions for a specified period of time are “dramatically” weaker than those with the power to deny permits. Since states have the power to include strong anti-demolition provisions in enabling statutes the choice is a matter of political will.

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226 Ibid.
230 Ibid., Kass, LaBelle and Hansell, 209. Also see Chapter 6 of this dissertation.
At all levels of government, the preservation laws of Scotland and England are stronger than those discussed in the United States. As mentioned in Section 5.4, both England and Scotland strictly regulate the demolition of historic structures from a national, rather than regional or local legal framework. There are no gaps in territorial coverage. The laws are comprehensive. Local governments do not opt in or opt out, and the rule of the law contains a strong presumption against demolition.

At the state level in the United States among the jurisdictions studied, the approach in both New York and Florida allows local governments to prevent demolition. This allows New York City, St. Augustine, and Palm Beach to implemented strong anti-demolition ordinances. These ordinances do not result from explicit language in an enabling statute, but rather a broad authority from state governments without a restriction on demolition under a “home rule” concept. But a problem in both states is that if county or city authorities do not have the interest or political will to implement a no-demolition ordinance, the states do not intervene.

North Carolina and Virginia are delay-in-demolition states. Virginia’s approach is slightly stronger because it forces a property owner seeking to demolish to put the property up for sale to potential preservationists. North Carolina only provides the delay to give interested parties a time to “negotiate” in an effort to preserve. While there is little ultimate authority to stop demolitions in either state, there is benefit to their approach. The explicit statutory regulations for preservation “give less sophisticated local governments specific instructions…and it assures greater consistency of regulation.” On the other hand, since the statutes in these states are weak with regards to demolition, they are consistently weak across these states.

232 Kass, LaBelle and Hansell, 24.
233 This is the state policy in North Carolina; but as indicated in Section 4, three cities have been given strong anti-demolition authority by the General Assembly through “local bills.”
234 Stipe and Lee, 130.
Regardless of the local strength to prevent demolition, in all of the American states studied, the ultimate decision on whether or not to even regulate historic preservation is left up to local authorities, so large areas of all states may not even be subject to any preservation regulation, much less to anti-demolition provisions.

Section 6: Are Anti-Demolition Statutes Constitutional?

Preservation regulations, particularly those that prevent owners from demolishing or altering their structures, raise questions as to which competing interest should prevail – society’s interest in protecting its heritage or an individual’s interest in using his property as he pleases. This raises the fundamental question as to whether the constitutions of the United States and the various states, and the protections of owners’ property rights therein, trump society’s interest in preserving its heritage through preservation laws. For the United States and the State of North Carolina, landmark legal cases establish that society’s interest usually prevails.

6.1 Penn Central v. New York City

Following the demolition of the iconic neoclassical Pennsylvania (railroad) Station by the Pennsylvania Transportation Company in New York City in 1963, the city adopted a preservation ordinance that would curtail demolition or alteration of designated landmarks. Another iconic train station in the city, Grand Central Terminal, was given landmark status. Thereafter its owner, Penn Central Transportation Company, sought permission from the city’s landmarks commission to build a skyscraper in the airspace over the terminal. The proposal included an alternate plan to partially demolish a portion of the façade of the terminal to accommodate the skyscraper construction. The commission denied the permits


\footnote{Ibid., New York City Landmarks Preservation Commission, “About LPC.”}
and Penn Central brought suit against New York City alleging that the landmarks ordinance caused a violation of its constitutional rights as a property owner. In 1978, the case, commonly known as *Penn Central v. New York* 237 found its way to the United States Supreme Court, the highest court in the nation. The court began its decision with this language:

“Over the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance. These nationwide legislative efforts have been precipitated by two concerns. The first is recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. The second is a widely shared belief that structures with special historic, cultural, or architectural significance enhance the quality of life for all. Not only do these buildings and their workmanship represent the lessons of the past and embody precious features of our heritage, they serve as examples of quality for today.” 238

Regarding one of Penn Central’s proposals to partially demolish a façade on the terminal, the court quoted with approval from the decision of the landmarks commission: “To protect a landmark, one does not tear it down. To perpetuate its architectural features, one does not strip them off.” 239

The court went on to note: “. . . [T]his Court has recognized, in a number of settings, that States and cities may enact land use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city . . . ”240 The court then determined:

“On this record, we conclude that the application of New York City's Landmarks Law has not effected a "taking" of appellants' property. The restrictions imposed are substantially related to the promotion of the general welfare, and not only permit reasonable beneficial use of the landmark site,

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238 Ibid., 107-108.
239 Ibid., 117.
240 Ibid., 129.
but also afford appellants opportunities further to enhance not only the Terminal site proper but also other properties.\textsuperscript{241}

With this Supreme Court decision in 1978, it was settled law that state and local historic preservation legislation with provisions preventing the demolition of historic structures did not violate individual property rights as set forth in the Constitution of the United States.\textsuperscript{242}

6.2 A-S-P Associates v. City of Raleigh

As for state constitutional challenges, the North Carolina Supreme Court took up a case a year later in A-S-P Associates v. City of Raleigh.\textsuperscript{243} In 1975, the City of Raleigh designated its Oakwood area as a historic district essentially because of the high number of Victorian Era residences in that neighborhood. Raleigh’s actions required property owners who wished to alter existing buildings or to construct new buildings, to get planning permission from the city’s Historic District Commission. The commission was to ensure that alterations and new construction were accomplished “in a manner that will not result in a structure incongruous with the historic aspects of the Historic District.”\textsuperscript{244} A-S-P Associates owned a vacant parcel of land in the district that was zoned commercial. Since the land was located in the district, A-S-P was required to gain commission approval to build, and any new structure would have to be congruent with the district. This would affect the architectural design, size and cost of a new structure. A-S-P brought suit against Raleigh asserting that the preservation ordinance violated basic federal and state constitutional provisions protecting private property.\textsuperscript{245}

The North Carolina Supreme Court referred to the \textit{Penn Central vs. New York} case by noting:

\begin{itemize}
  \item \textsuperscript{241} Penn Central v. New York City, 138.
  \item \textsuperscript{243} A-S-P Associates v. City of Raleigh, 298 N.C. 207 (1979). (Supreme Court of North Carolina.)
  \item \textsuperscript{244} Ibid., 218.
  \item \textsuperscript{245} Ibid., 209.
\end{itemize}
In the recent case of *Penn Central Transp. Co. v. New York City.* . . . applying the concept of the public welfare . . . , the Court upheld comprehensive governmental regulation of private property designed to preserve historic buildings in the City of New York. ²⁴⁶

The court discussed the trend in preservation legislation across the nation including Louisiana and referred to the case of *Maher v. City of New Orleans* which involved a City of New Orleans preservation ordinance that prohibited the demolition of historic structures. ²⁴⁷

The court then went on to note the lofty ideals of preservation and its invaluable impact on American culture, ²⁴⁸ and continued by stating “Property owners within the Historic District may, by virtue of this requirement, be unable to develop their property for its most profitable use or at the cost they would prefer.”

The decision included:

“To achieve the ultimate purposes of historic district preservation, it is a practical necessity that a substantial degree of discretionary authority guided by policies and goals set by the legislature, be delegated to such an administrative body possessing the expertise to adapt the legislative policies and goals to varying, particular circumstances.” ²⁴⁹

The court made this critical finding:

“[W]e find no difficulty in holding that the police power encompasses the right to control the exterior appearance of private property when the object of such control is the preservation of the State's legacy of historically significant structures.” ²⁵⁰

The state’s supreme court went on to dismiss all of A-S-P’s constitutional challenges to Raleigh’s preservation ordinance.

Though the A-S-P case addressed new construction on a vacant lot, the court favorably referenced both the *Penn Central vs. New York* and *Maher v. City of New Orleans* cases, and used the principles set out in those cases to find that the North Carolina constitution did not invalidate preservation ordinances. Both the *Penn Central vs. New York*

²⁴⁷ 516 Federal Reporter 2d 1051 (1975).
²⁴⁸ A-S-P Associates v. City of Raleigh, 216.
²⁴⁹ Ibid., 223.
²⁵⁰ Ibid., 216.
and *Maher v. City of New Orleans* cases involved *demolition* to some extent. It can therefore be presumed that the North Carolina Supreme Court includes anti-demolition of historic structures as a legitimate constitutional preservation tool.

Section 7: Strengths and Deficiencies in the North Carolina System

7.1 Strengths of Current Regulatory Scheme for Demolition

North Carolina’s preservation legislation is not without its strengths. Enabling cities and counties to form preservation commissions and designate historic districts and local landmarks raises public awareness of the importance of preservation.

The statutes provide tools that can be used by local governments to actively discourage the demolition of historic structures. The fact that there is a requirement for an application to demolish, a hearing, and a directive for commissions to “act upon proposals” for demolitions and to “negotiate” for a property’s preservation, all discourage demolition.251 The ability of the SHPO to designate a property for statewide significance to ensure it will not be demolished, at least in theory is a strength.252

The ability of a local commission to impose a mandatory 365-day delay gives the commission, private preservation groups and other interested parties an opportunity to negotiate with an owner for alternatives to demolition including alternate use, renovation, selling to a preservation minded buyer or in rare cases, relocation. Also, the one year delay gives preservation groups and other interested parties time to mobilize public opinion against the demolition which can add pressure on the owner to seek a preservation solution.

251 NC General Statutes §160A-400.8 (10,11).
252 NC General Statutes §160A-400.14 (c).
A survey of every planning department with a historic preservation commission in the state was attempted for the purposes of this dissertation. Seven out of nineteen total responses (37%) reported some success with the demolition delay and negotiation process.  

Part of the statute, §160A-400.14 (b), allows local governments to adopt ordinances that regulate “demolition by neglect.” Demolition by neglect, according to the National Trust for Historic Preservation, is “a situation in which a property owner intentionally allows a historic property to suffer severe deterioration, potentially beyond the point of repair.” In North Carolina, several cities including Raleigh, Greensboro, Hillsborough, and Charlotte have adopted such ordinances to require owners of historically significant buildings to keep a specified minimum maintenance level. Ordinances across the state have garnered mixed results due to complexity of cases and differentiation of interpretation among commissions, but in some cases the ordinance has proved successful. Regardless of varying results, localities that have adopted an ordinance have, in part, put a scheme in place to prevent the loss of structures to owner neglect.

A general strength of the preservation system in North Carolina is also the state’s Historic Preservation Office. This agency brings a state voice to preservation, provides a centralized office to coordinate preservation efforts statewide, and serves as a resource for critically needed expertise and support to local agencies.

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253 See Appendix E for survey results.
7.2 Deficiencies of Current Scheme

Despite a North Carolina preservation system that is generally effective and has reduced the demolition of historic assets over the past 40 years,257 deficiencies remain and historic structures continue to be lost. They can be seen both within the specific language of §160A-400.14 but also in the fact that the statutes create territorial gaps where large regions of the state have no statutory protection against demolition at all.

The ultimate deficiency in the system is simply that neither local preservation commissions nor the SHPO have the statutory authority to prevent the demolition of vast numbers of historic assets. It does not matter if a property is historic, architecturally significant, a local landmark, a contributing structure in a local historic district, individually listed on the National Register, or located in a National Register historic district. The statutory rule is that it can be demolished with an application filed by the owner – perhaps with a one year delay – but demolished nonetheless. While §160A-400.14(c) does give an exception for some structures, as will be developed below, it is so rarely used, it is insignificant for anti-demolition purposes. The inability of local commissions or the SHPO to prevent demolitions under the force of a law is the greatest deficiency of the statutes.

As for the territorial gaps, they result from the statutory scheme where only those local governments which voluntarily create historic preservation commissions have any jurisdiction to protect historic structures. Only in these localities is there even the possibility of review of demolition applications. The authority of a local commission only exists within the specific geographical area over which the local government has jurisdiction. For example, a municipal preservation commission can only exercise its authority within the corporate limits of the municipality.258 A county preservation commission can exercise its

257 According to interview with SHPO personnel, but it would be extremely difficult to quantify success and has not been done by SHPO.
258 NC General Statutes §160A-360(a)
jurisdiction throughout the county, but not within the corporate limits of a municipality that also has its own preservation commission.\(^{259}\) \(^{260}\)

In North Carolina, there are approximately 555 municipalities\(^{261}\) within 100 counties - a total of 655 potential local preservation jurisdictions. But only 72 municipalities and 19 counties have such commissions.\(^{262}\) This means that of the 655 potential jurisdictions, only 91 have taken advantage of the preservation enabling statutes. 564 jurisdictions have no preservation commissions. Those localities without commissions have no authority, weak or not, over the demolition of historic structures. As a result, vast areas of the state have no anti-demolition or general historic preservation regulations at all.

Then we turn to the language of §160A-400.14(c). If the State Historic Preservation Officer determines that a historic structure has statewide significance “as defined in the criteria of the National Register of Historic Places,” then and only then can a local commission deny a demolition application within their jurisdiction.\(^{263}\) Before additional numbers are discussed, it needs to be reiterated that local commissions have no inherent jurisdiction over structures listed in the National Register or within a National Register Historic District. The state statutes only extend jurisdiction to structures that are \textit{locally} landmarked or are within a \textit{local} historic district.\(^{264}\) As it turns out, often \textit{local} districts overlap National Register Districts, and all of the state’s major cities have local and national historic districts,\(^{265}\) so commissions often have jurisdiction in a national district, but only to

\(^{259}\) NC General Statutes §160A-360(c)
\(^{260}\) For example, the city of Winston-Salem does not have its own commission and uses the Forsyth County Historical Commission as its preservation authority. Alternatively, Wake County has a county-wide preservation commission with jurisdiction over smaller towns like Carey and Apex, but Raleigh, the capital of North Carolina and also located within Wake County, has their own municipal preservation commission.
\(^{263}\) NC General Statutes §160A-400.14(c)
\(^{264}\) NC General Statutes §160A-400.7 and §160A-400.8 (10)
the extent of the local district overlap. But the National Register is important, at least theoretically, because their criteria are used to determine “statewide significance” that can protect a structure from demolition.

Generalities can be drawn from the available data as to how many historic properties qualify for statewide significance. Records are maintained by both the SHPO and the National Register. The SHPO maintains files on 100,000 historic properties. The National Park Service estimates 66,000 properties are either individually listed or are contributing structures in National Register historic districts. 25% of the structures that are listed on the National Register have the state level of significance and 5% have national significance, leaving 70% with local significance. The SHPO considers national significant properties to also have state significance, so 30% of individually National Register listed structures should qualify for demolition protection. Using only the Park Service estimate, if 66,000 structures are considered, the potential for those that should qualify for protection from demolition would be 19,800. (Using this analysis, 70% of the estimated 66,000, or 46,200, would qualify at the local level and could not be protected from demolition.)

With the potential for almost 20,000 structures to have statewide significance, it would be presumed that many structures would have protection from demolition as defined by the statute. However, since the 1989 inclusion of §160A-400.14(c) in the state’s preservation statutes, there have been only 24 applications to the SHPO for a statewide significance determination. Of those, only twelve have received the status of statewide significance.

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266 The Town of Beaufort has a typical overlap of a local district over a National Register District. See: Town of Beaufort. Historic Preservation Commission, “Design Guidelines for Beaufort Historic District & Landmarks.”
267 Interview with SHPO personnel.
269 Ibid.
270 Interview with SHPO personnel and Appendix G for statewide significance list.
significance.\textsuperscript{271} This \textit{includes} Babies Hospital which has been demolished. The result is that in the State of North Carolina only eleven structures are completely protected from demolition by the state’s statutory preservation system.

One obvious problem is the lack of applications. Even with a wealth of structures that should qualify for statewide significance, under the SHPO’s current process, without an application, there is no designation; and, therefore most historic structures that could qualify for §160A-400.14(c) protection go without such protection.

Lastly, while the state’s enabling statute gives localities the authority to prevent demolition by neglect,\textsuperscript{272} and this is a strength of the regulatory scheme, it can be argued that such authority is a \textit{non sequitur} in the overall anti-demolition scheme. From a practical perspective, since there is no authority to completely prevent the demolition, would not the enforcement of a demolition by neglect ordinance tend to push a non-compliant owner to demolish a structure rather than face mounting enforcement action over demolition by neglect?

Section 8: Is There Really a Problem?

\textit{“Our historic districts are threatened by inadequate protection from demolition.”}\textsuperscript{273}

\textit{-Preservation Chapel Hill, 2013 Endangered Places List}

Since 1971, there has been a statewide preservation plan in North Carolina\textsuperscript{274} and it has been relatively effective in reducing demolitions. So is there truly a problem with the provisions of the statute when it comes to demolition?

\textsuperscript{271} Interview with SHPO personnel and Appendix G for statewide significance list.
\textsuperscript{272} NC General Statutes §160A-400.14(b).
\textsuperscript{273} Preservation Chapel Hill, “2013 Endangered Places List.”
\textsuperscript{274} Brook, 109.
8.1 Babies Hospital Case Study

On 14 February, 2002, faced with threat of demolition, the Historic Preservation Commission of Wilmington voted in their monthly public hearing to officially recommend a local landmark designation of a historic pediatric hospital in the city, known as Babies Hospital. The effort to have the building designated was led by Wilmington’s private preservation advocacy group, the Historic Wilmington Foundation. The timing of the designation recommendation was done with the hope of placing a stay on the property in order to find a solution that might save the building from demolition.

Babies Hospital was founded by pediatrician Dr. J. Buren Sidbury, a Columbia University educated physician who completed residencies at the renowned Roosevelt Hospital in New York City and the New York Foundling Hospital in the second decade of the twentieth century. After his formal training in New York City, Sidbury moved to Wilmington “becoming only the second pediatrician in North Carolina.” He established Babies Hospital a few years later in June of 1920 located on Wrightsville Sound in a large beach cottage with the distinct purpose of providing “advanced” medical care to children.

This original cottage, built around 1900, was destroyed in 1927 by fire and replaced a year later with a “modern” hospital structure designed by well known North Carolina architect, Charles C. Hartmann. Hartmann’s design was a yellow and garnet brick, Spanish Colonial Revival building “originally consisting of a three-storey, three-bay, projecting main block flanked by two-story wings and attached, double-storey, screened end.

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275 City of Wilmington Historic Preservation Commission, Minutes from commission meeting on February 14, 2002, HPC Archives Book 9, Page 54, (Obtained by author from City of Wilmington Planning Department on July 3, 2013).
276 Ibid., 53.
277 Ibid.
278 Statement of statewide significance in Application for a Determination for Statewide Significance Pursuant to G.S. 160A-400(c). Babies Hospital, Wilmington, NC. (Obtained by author from City of Wilmington Planning Department on July 3, 2013), 1.
279 Ibid.
280 Ibid.
281 Ibid., 5.
In keeping with Spanish Colonial style, the roof of the main block was red Spanish clay barrel tile with pent tile on the roof of the wings.\textsuperscript{283} [Figure 9]

In 1955, the building underwent several renovations including replacing the tile roof with a pre-fabricated “standing-seam metal roof,” adding a third storey to the wings and enclosing several porches. The hospital closed in 1978 and the interior was remodeled for use as an office building, but the integrity of most of the original exterior features and detailing remained intact.\textsuperscript{284} The structure was one of the few Spanish Colonial Revival public buildings in Wilmington.\textsuperscript{285}

Aside from the architectural contribution of the building, the hospital “holds special significance for North Carolina as the first modern pediatric hospital built in the state” where innovative efforts to treat sick children were undertaken by the hospital’s founding doctor.\textsuperscript{286}

Babies Hospital was officially designated as a local historic landmark by the City of Wilmington on May 7, 2002.\textsuperscript{287} Undeterred and with intent to demolish the newly landmarked building, the property owner applied to the city’s historic preservation commission for a certificate of appropriateness to demolish the building according to the demolition statute.\textsuperscript{288} At that time the SHPO had not designated the building as having

\textsuperscript{282} Statement of statewide significance in Application for a Determination for Statewide Significance Pursuant to G.S. 160A-400(c)., 5.
\textsuperscript{283} Ibid.
\textsuperscript{284} Ibid.
\textsuperscript{285} Ibid.
\textsuperscript{286} Ibid.
\textsuperscript{287} City of Wilmington City Council, Minutes from council meeting on May 7, 2002, HPC Archives, Page 7, (Obtained by author from City of Wilmington Planning Department on July 3, 2013).
\textsuperscript{288} NC General Statutes §160A-400.9(a), “Certificate of appropriateness required.”
statewide significance and the preservation commission had no choice but to grant the COA. The COA was issued on 13 June, 2002 but subject to the 365-day demolition delay authorized by the statute.\footnote{289}

During the year-long delay, the Historic Wilmington Foundation, in partnership with Preservation North Carolina, sought to obtain an option to purchase the property.\footnote{290} Negotiations to purchase failed because the owners rejected the preservation groups’ option offer and would not set a price to sell.\footnote{291}

As negotiations dissolved, the Historic Wilmington Foundation filed an application with the SHPO to have the building declared a statewide significant structure.\footnote{292} Four days before the expiration of the demolition delay, the SHPO granted the statewide significance status.\footnote{293}

With this new designation, the city’s preservation commission moved to reconsider the certificate of appropriateness and directed the building inspector not to issue a permit for demolition until a new determination had been made on the COA.\footnote{294}

Upon the building inspector’s denial of the demolition permit, the owner filed suit in the New Hanover County Superior Court claiming the right to demolish the building.\footnote{295} The court sided with the owner on a technicality finding that the wording of the statute only allows “applications” for demolitions to be denied on buildings with a designation of statewide significance, but the COA to demolish had been issued before such designation

\footnote{289} “Memorandum of Law in Support of Petition for Writ of Mandamus/Mandatory Injunction.” Bailey and Associates, Inc. vs. City of Wilmington et al, File Number 03 CvS 2243 Clerk of Superior Court, New Hanover County, Page 1. AND 365-day demolition delay is standard for locally landmarked properties or buildings within historic districts according to NC General Statutes §160A-400.14. “Delay in demolition of landmarks and buildings within historic district.” Subsection (a).

\footnote{290} “Affidavit of Alma P. Hubbard,” Bailey and Associates, Inc. vs. City of Wilmington et al, File Number 03 CvS 2243 Clerk of Superior Court, New Hanover County, Exhibit E. (Obtained by author at New Hanover County Courthouse on July 3, 2013.)

\footnote{291} Ibid., Exhibit E.

\footnote{292} Ibid., Bullet point number 15.

\footnote{293} “Memorandum of Law in Support of Petition for Writ of Mandamus/Mandatory Injunction.” Bailey and Associates, Inc. vs. City of Wilmington et al, File Number 03 CvS 2243 Clerk of Superior Court, New Hanover County, Page 2.

\footnote{294} Wilmington HPC minutes from 12 June, 2008, book 9 page 221

\footnote{295} Bailey and Associates, Inc. vs. City of Wilmington, Page 1.
thus there was no longer a pending application to be denied. The court therefore found that the preservation commission did not have the authority to reverse a certificate that it had already granted and that the owner’s COA for demolition was still valid.  

Much to the dismay of many community members, preservation advocacy groups across the state, and Wilmington’s preservation commission, who unanimously voted on all decisions regarding the property, the building was demolished in January of 2004.  
The site is currently empty and being utilized as a makeshift car park.  

The 2004 demolition of Babies Hospital speaks for itself. Regardless of the timing on the various aspects of the attempt to preserve the building, it was landmarked by the City of Wilmington and designated by the State Historic Preservation Officer as having statewide significance – but it was torn down under court order.

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296 “Judgment and Order.” Bailey and Associates, Inc. vs. City of Wilmington et al, File Number 03 CvS 2243 Clerk of Superior Court, New Hanover County.


298 Observation by author.
8.2 Facts and Figures

Babies Hospital is the tip of the iceberg. We know about it because of its iconic status. Historic buildings that are less prominent continue to disappear throughout North Carolina every year. The State Historic Preservation Office maintains and updates county-by-county surveys of historic buildings. A sample of survey updates reveals the following.

In Bertie County, located in the northeast part of the state, outside of two National Register historic districts\textsuperscript{299} the N.C. Historic Preservation Office maintained files of 269 structures of historical significance based on field surveys conducted between 1979 and 1985. In a 2010 survey update of those 269 properties, 95 had been “removed from their original site,” with the majority being demolished and a few relocated.\textsuperscript{300} The surveyor wrote that this 35% loss represents “a significant loss of some of the county’s most distinctive buildings.”\textsuperscript{301}

In a 2012 survey update for Carteret County, on the south central coast, the surveyor based her work on 62 historic structures listed with the N.C. Historic Preservation Office in previous decades. Of those structures, 17 or 27% had been demolished and only 20 were unchanged.\textsuperscript{302}

For Beaufort County, another eastern county and the site of Bath, North Carolina’s oldest town, a survey of historic structures was updated in 2011. Outside of the county’s municipalities, the state’s preservation office maintained files dating to 1975 on

\textsuperscript{299} There are no local historic districts or preservation commissions in Bertie County.


\textsuperscript{301} Blokker, 5.

approximately 67 structures. During the survey, 28 of those structures, approximately 40%, were observed to have been demolished or removed.\textsuperscript{303}

In Hertford County, another northeastern county, dating to 1976 the state’s preservation office maintained files for 227 properties. During a 2011 update, 83 were observed to have been “removed” from their original sites including the actual relocation of a structure on the National Register and the demolition of another National Register property. The survey notes the “unfortunate loss of some of the county’s most distinctive buildings.”\textsuperscript{304}

Moving to the western piedmont area of the state and Forsyth County, a 2009 update of a previous survey dating to 1978 noted an “escalation” in “historic resource loss” and that approximately 33% of the structures on the previous survey lists had been demolished.\textsuperscript{305}

As previously mentioned, a survey of every planning department with a historic preservation commission in the state was attempted for the purposes of this dissertation. Of the 91 localities with commissions,\textsuperscript{306} nineteen responded to the survey, representing approximately 21% of all preservation commissions within the state. Twelve of the nineteen commissions, approximately 63% of respondents, reported demolitions to have occurred to local landmarks or contributing structures within historic districts after the formation of a preservation commission. Eight or approximately 42% were required to issue demolition permits they were hesitant to issue.

In the survey, an estimated total of 91 contributing structures or local landmarks were reported to have been demolished. This represents an average of approximately five buildings

\begin{footnotes}
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per survey respondent. Extrapolated to the 91 jurisdictions with preservation commissions in the entire state, an estimate of 455 contributing structures or local landmarks statewide have been demolished in jurisdictions with preservation ordinances subsequent to the adoption of the state’s preservation statutes.  

There is also unease about the possibility of demolitions among planners in localities with preservation ordinances even when the loss of historic structures has not been a problem. One planner said, “our concern is that we cannot deny the COA, no matter what the merits of the property in question.” Another noted “the Commission members regretted that they had no authority to delay demolition of structures not designated as a landmark or located in a historic district.”

Demolition does not escape even progressive cities in North Carolina. In recent years, a string of acclaimed Modernist structures in Raleigh have been lost. The student bookstore on the campus of North Carolina State University, built in 1960 and designed by Milton Small, a student of Mies van der Rohe, was demolished in the summer of 2011 to make way for a new student center.  

![Figure 12: Milton Small, plans for N.C. State University Bookstore](image)


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307 See Appendix E for survey results.
308 Ibid.
School of Design when it grew to national prominence in the 1950s and 1960s. The impending demolition was brought into the national spotlight by the National Trust in its publication, *Preservation Magazine*.

The Paschal House, a 1950s modernist house in Raleigh which was listed on the National Register and hailed by Frank Lloyd Wright was demolished in March 2013. Preservation groups lamented not having advance notice of the demolition to advocate for a local landmark designation that may have delayed or changed its fate. Raleigh’s Eduardo Catalano House, a striking modernist structure, and also acclaimed by Frank Lloyd Wright, was demolished in March of 2001 despite efforts by Preservation North Carolina to preserve. [Figure 14.]

In 2012, the citizens of the historic Town of Beaufort in Carteret County, and indeed heritage conservation proponents from all over the state, were shocked with the filing of an application for a certificate of appropriateness to demolish the Duncan House. The

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310 Eric Willis, “Modernist N.C. State Bookstore Slated for Demolition.”
Duncan House, a two storey clapboard home with traditional double porches overlooking the town’s waterfront, was constructed circa 1815 and considered one of the town’s finest examples of early nineteenth century architecture. The citizenry was so upset, that protest signs were erected near to the house. Ultimately public pressure, and not the state statute, caused the applicant to first amend the application to request a certificate of appropriateness to relocate the house, but when public pressure did not ease, the applicant withdrew the entire application and sold the property. The SHPO then granted “statewide significance” under §160A-400.14(c) so, not only was the Duncan House spared demolition or major alteration, it is now one of the few structures in the State of North Carolina with ultimate statutory protection against demolition. Preservationists may consider this to be an example of the strength of the statute, but had the owner/applicant for the demolition permit been as determined as the owner of Babies Hospital, the case could have had an entirely different outcome, and another historical/architectural treasure could have been lost. [Figure 15.]


316 Hogwood, “New Duncan House Owners Apply with Town to Tear Down Structure.”

With the tens of thousands historic structures in North Carolina, every historic preservation commission in North Carolina can be one application away from a request for a demolition permit for a historic structure. Only eleven standing structures in the state have §160A-400.14(c) protection against demolition.318

Section 9: Possibilities for Improvement.

“The strongest preservation commissions have the power to deny demolition permission.”319

-Preservation Law Reporter, National Trust for Historic Preservation

9.1 Changes within the Existing Framework

Few argue against the national and state policy for protection of historic structures, but the regulations do not keep up with the policies. If there is no political will to change the state statutes, there are some things that can be done within the existing framework to strengthen the anti-demolition laws.

One measure is that cities and counties with preservation ordinances can amend those ordinances to require an application to the SHPO for a statewide significance determination on every demolition application filed for a contributing structure in a historic district or for a local landmark. The demolition application itself automatically triggers a statewide significance review and local governments are not left in the legal limbo that was experienced in the Babies Hospital case where the timing on the various applications became a legal problem. An applicant will know that he triggers a statewide significance determination if he applies for demolition and perhaps that process will discourage demolition applications.

Another important anti-demolition tool is for preservation commissions to be proactive in identifying and nominating to the SHPO properties that may qualify for statewide significance. If granted, this could completely avoid the community pain and

318 Email correspondence and interview with SHPO personnel.
uncertainty of some demolition proceedings. Connected to this should be a fairly vigorous effort for local commissions and governments to landmark historic structures that are not in a historic district, but are nonetheless within the jurisdiction of the local government. Historic structures outside of historic districts that are not landmarked are not subject to the delay in demolition provisions of §160A-400.14(a).

There are efforts the SHPO can take within the existing statutory framework to protect more historic structures. For example, there is nothing in §160A-400.14(c) that requires the SHPO to wait for an application from a local commission to determine “statewide significance.” The State Historic Preservation Office can amend its administrative rules to allow it to initiate a determination. At a minimum, it can identify structures that are likely to qualify and encourage local commissions and the property owners themselves to consent to designation. Along the same line, if new National Register applications at the state or national level arise for structures within the jurisdiction of a local preservation commission, the SHPO could ask the commission to initiate a §160A-400.14(c) “statewide significance” application concurrently.

Also, the SHPO can take an expansive view of the criteria of the National Trust for statewide significance. With a strong national and state policy favoring preservation, an expansive view would seem appropriate, and the criteria themselves beg for a broad interpretation. They refer to “architectural type or style” extending beyond local significance. The Duncan House in Beaufort received statewide designation in 2012, and while certainly of fine architectural merit there are many homes in the Beaufort Historic District that are equally important to the architectural history of the state. Only the Duncan House is designated. Rare should be the case that only one or two contributing structures in North Carolina’s historic districts have statewide significance.
9.2 Statutory Changes.

Ultimately, to truly strengthen the approach to preservation in North Carolina, and to further reduce demolitions, the state legislature will have to act. There are two approaches. One is through adoption of local acts that apply only to specific named jurisdictions. The other is a statewide approach where amendments to existing statutes apply throughout the state.

As for local acts, the General Assembly has been receptive to authorizing the few specific cities to better control demolition. This occurred in 2005 and 2007 when the General Assembly authorized Statesville, New Bern and Salisbury to prevent demolitions altogether. Local authorities can look to these bills as a guide in seeking enhanced authority from the state legislature to prevent demolitions in their jurisdictions. The downside is that if the General Assembly reacts on a community-by-community basis, a patchwork of regulation will emerge across the state in jurisdictions with governmental preservation programs.

To prevent inconsistencies, the General Assembly can simply amend §160A-400.14 to strengthen the anti-demolition provisions. The strongest amendments would be to authorize all local preservation commissions to deny demolition applications under the models of the local bills for Statesville, New Bern, or Salisbury. Until all local commissions have the authority to deny demolition applications, North Carolina will have a glaring deficiency in its preservation system.

But even if the General Assembly was persuaded to grant such sweeping authority, comprehensive anti-demolition law would not apply throughout the state. There remain large areas of North Carolina where local authorities have not provided for historic preservation. Until the entire state is under preservation law with strong anti-demolition provisions, a loss of historic assets will continue.
North Carolina does not have to invent a totally new regulatory plan to reach the entire state. As advocated by members of the Society for the Preservation of Antiquities decades ago, with some modification, the examples in Britain can serve as a guide to create a comprehensive statewide plan that can stop the loss of historic structures through demolition.\(^{320}\) The existing North Carolina framework has its strengths and this can be built upon rather than abandoned. Local preservation commissions should remain an essential component of the plan, and historic district regulations need to remain a fundamental unit of control. But to reach those historic assets outside the jurisdiction of local preservation commissions, the General Assembly will have to provide additional measures. This is where the British concept of “listed buildings” is important. For the state to reach and protect historic buildings that are not under the jurisdiction of existing preservation commissions, a state officer or agency needs not only the authority to list or landmark structures, but also the responsibility to undertake such action. And, by statewide statute, a landmarked structure should be given a high degree of protection against demolition.

Obviously the State Historic Preservation Officer is the likely candidate to serve as the state official to designate landmarks. This office already has similarities to Historic Scotland and English Heritage; it simply lacks their power.

While national tradition in the United States differentiates between levels of “significance” at national, state or local – which is also the nomenclature for listed buildings in Scotland - as in Britain, the distinction should not factor in a demolition decision. If the SHPO landmarks a building at any level, it should receive statutory anti-demolition protection.

For those who might argue that such a plan would usurp local authority, those municipalities and counties without preservation programs would have the choice to opt into

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\(^{320}\) No jurisdiction, including Scotland and England, completely and totally prevents the demolition of historic structures. Some demolitions are in the public interest and others are unavoidable as a result of decay beyond repair.
the plan and establish local commissions under the statute. If they chose not to, the state office would then step in to administer preservation regulations in those areas. This would keep the power of preservation at the local level except where a locality is unwilling or unable to take such action.

Regardless, to keep a plan balanced and consistent on a statewide basis, for demolitions of any landmark, whether designated by the SHPO or a local jurisdiction, or any contributing building in a historic district, there should be a right of appeal to the SHPO when a local commission grants permission for the demolition of a historic structure. This will be a hedge against consent to demolish based on an error by local authorities in interpreting policy, the law or the facts. Such a review will be similar to the process followed in Britain where no listed buildings at any level can be demolished without consent from a national preservation agency.

Until there is a statewide law to prevent the demolition of historic structures, which the state government considers to be “one of our most valued and important assets,” North Carolina’s policy to safeguard its historical heritage321 cannot be fully realized.

Conclusion:

While preservation legislation beginning in 1971 did slow the demolition of historic structures across North Carolina, such ‘depredations’ were not stopped. The loss of Babies Hospital and the Modernist homes in Raleigh, and the continuing loss of historic structures in the counties, underscore this fact. The 2012 effort to demolish the Duncan House in Beaufort is a very recent wake-up call that at any moment a cherished historical structure can be threatened. There are measures the state can take to support its stated public policy to preserve. Other states in America have allowed their local governments to impose the

321 NC General Statutes §160A-400.1.
highest degree of preservation – virtual anti-demolition authority. Scotland and England have demonstrated how this can be accomplished on a statewide basis. This authority is available in North Carolina by action of the General Assembly.

As such, when the political climate in North Carolina is favorable for the highest regulatory protection of its historic structures, legislators should consider the strong anti-demolition regulations enforced in other parts of the United States and in the United Kingdom. Until that time, local commissions must proactively take full advantage of the current regulatory system in attempt to prevent the further loss of worthy historic assets. The State Historic Preservation Officer should be accommodating.

It is an axiomatic truth that that not all historic structures can or should be saved, but in the words of the late Robert E. Stipe, an influential figure and scholar of national preservation planning and the “grandfather” of the modern preservation statutes in North Carolina, “…no historic building of real significance need be lost through the sheer perverseness of the individual owner, at least where the political will is available to save it…”322

BIBLIOGRAPHY

BOOKS


**JOURNALS & ARTICLES**


Application for a Determination for Statewide Significance Pursuant to G.S. 160A-400(c).
Babies Hospital, Wilmington, NC. Obtained by author from City of Wilmington Planning Department on July 3, 2013.


City of Wilmington City Council. Minutes from council meeting on May 7, 2002. HPC Archives, Page 7. Obtained by author from City of Wilmington Planning Department on July 3, 2013.


http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl


WEBSITES


http://www.palmbeach.govoffice.com/index.asp?Type=B_BASIC&SEC=%7B8119790F-98F3-4550-BB39-C831DEF8C821%7D.


